



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-95-9

FACTS:

You are a member of the General Court. You serve or will serve on one or more legislative committees but do not and will not serve on any Banking or Housing Committees.

You are also employed as a residential loan officer by XYZ, a private lender. In that position, you meet with potential borrowers, explain XYZ's programs to them and assist them in completing their loan applications. Thereafter, you submit the completed loan applications to XYZ's loan processing department and, if XYZ requires additional information, you obtain it from the applicants and provide it to XYZ. You play no role in XYZ's decisions regarding applicants' eligibility or qualifications for loans, their receipt of loans or the amounts or conditions under which any such loans are made. Rather, you inform potential borrowers about the loan process and the availability of loans and perform a clerical and in-take role for XYZ.

The potential borrowers whom you serve reach you through various means. Most commonly, acquaintances refer business to you; XYZ and its affiliated entities refer interested parties in your loan territory to you; and you affirmatively promote XYZ's residential loan programs to those in your loan territory who are regularly involved in real estate transactions, namely, realtors, lawyers and financial planners. You have not publicly advertised or disseminated announcements about your business affiliation with XYZ, nor has XYZ done so.

XYZ currently compensates you by commission for each loan that is initiated through you and that "closes;" you receive no compensation if a loan does not close. Your commission is currently .5% of the principal amount of the loan. XYZ pays you from a separate account; your compensation is not derived from the loan closing proceeds. You receive no other compensation in connection with your work as a loan officer.

You sometimes deal with potential borrowers who are likely not to qualify for conventional bank mortgage loans for the homes they wish to purchase. You would like to inform them about and direct them, if and when appropriate, to three Massachusetts loan programs that, in different ways, could assist them in purchasing such homes. Those programs are described below.

1. MHFA's First-Time Home Buyers' Program (MHFA Program). Under this Program, the Massachusetts Housing Finance Agency (MHFA), using more flexible underwriting standards than are generally applied, makes below market-rate mortgage loans available to income-eligible, first-time home buyers, *e.g.*, through lower interest rates and/or equity requirements. Private lenders, such as XYZ, originate and process such loans to satisfy state and federal Community Reinvestment Act requirements calling for lenders to invest certain amounts of money in disadvantaged areas. MHFA, in effect, funds such loans by purchasing them from such lenders pursuant to loan purchase agreements with such lenders. MHFA derives its monies from its issuance and sale of bonds. In addition, for an annual fee (currently .25% of the original principal amount of the loan), virtually all such lenders, including XYZ, agree to service such loans pursuant to loan servicing agreements with MHFA. The borrowers may also be required to pay such lenders up to two points, which may be financed through the loan.

MHFA approves any private lender that (i) applies to originate and service such loans, (ii) satisfies MHFA's financial criteria and (iii) agrees to operate in accordance with MHFA's programmatic guidelines. There are currently 55-60 active private lenders participating in the MHFA Program.^{1/}

2. MHPFB's Soft Second Program (MHPFB Program). The Massachusetts Housing Partnership Fund Board (MHPFB)^{2/} administers this Program under a contract with the Massachusetts Executive Office of Communities and Development (EOCD). This Program has been funded with public monies from a variety of sources.^{3/} This Program's objective is to broaden opportunities for first-time home ownership for low- and moderate-income persons by reducing their first mortgage loan amounts and lowering their initial monthly costs. To that end, participating private lenders such as XYZ originate both the first and second mortgage loans, and the second mortgage loan is structured so that repayment of principal is deferred for a period of time, with interest-only payments initially. MHPFB subsidizes a portion of the second mortgage loan interest payments due from borrowers to their private lenders. To effectuate such subsidies, MHPFB, the borrowers and the private lenders enter into tri-party subsidy agreements pursuant to which MHPFB deposits into a lender account amounts to be used to subsidize such loans. In addition, under a separate agreement between MHPFB and the private lenders, a pool of public funds is available to provide a loan loss reserve for the lenders as additional security in case a borrower defaults under such "soft second loan." Among the attractions of this Program for private lenders is that it allows them to structure their first mortgage loans so as to be saleable in the secondary market.

Private lenders are often encouraged and invited to participate in this Program. This Program is open to private lenders who wish to participate, with priority given to lenders offering competitive terms.

3. EOCD's HOME Program. EOCD administers this federally-funded Program. Among its offerings, this Program provides to first-time home buyers funding assistance for down payments and closing costs (EOCD Program). Municipalities and non-profit organizations, such as community development corporations, (collectively, Non-State Entities) apply to EOCD for this funding. Pursuant to written agreements (HOME Agreements), EOCD provides such funding to those Non-State Entities that it selects. The Non-State Entities then award such funds as no-interest loans to borrowers, thereby assisting borrowers in obtaining financing from private lenders. Such loans are forgiven progressively and, if the borrowers continue to reside in their homes for a specified minimum periods of time, they are eventually forgiven entirely. EOCD enters into its HOME Agreements with the Non-State Entities; it does not deal with the borrowers or the private lenders.

The Non-State Entities select the private lenders whose borrowers will receive such assistance based on the lenders' willingness to afford their borrowers more flexible underwriting standards and/or loan terms and conditions.

(We will refer to the MHFA, MHPFB and EOCD Programs collectively as State Programs and to loan monies made available through such State Programs as State Assistance. We will refer to MHFA's loan purchase and servicing agreements, MHPFB's subsidy and loss reserve agreements and the EOCD's HOME Agreements collectively as Agreements.)

State Assistance would be attractive and could be available to potential borrowers having low and moderate incomes. You would like to initiate and process loans to such potential borrowers. If you were permitted to do so, you would, in appropriate cases, advise such borrowers about the benefits and requirements of the relevant State Programs, assist such borrowers in completing applications and forms and providing additional materials and information that may be required, and transmit the same to XYZ.^{4/} Other XYZ personnel would then engage in any and all communications and dealings with State Program personnel. If more information or materials were required to assure the availability of State Assistance for a particular borrower or to process the loan, you would gather and provide it through XYZ in the same way.

If borrowers for whom you initiated and processed loans were also to receive State Assistance through one or more of the State Programs in connection with their loan closings, the amount of and manner in which XYZ pays your compensation would not vary. Your XYZ compensation would be due you if XYZ transaction closed and would be calculated as it now is, based on the then "going" percentage of the principal amount of the XYZ loan. If the loan did not close, you would receive no compensation.

QUESTIONS:

1. Does G.L. c. 268A permit you, while serving as a member of the General Court, to receive compensation from XYZ for initiating XYZ loans to borrowers who receive State Assistance through any of the State Programs when such compensation is conditional on the closing of the subject loan?

2. Does G.L. c. 268A permit you, while serving as a member of the General Court, to work for XYZ as a loan officer in connection with XYZ loans not involving State Assistance through any of the State Programs?

ANSWERS:

1. No.

2. Yes, subject to the limitations described below.

DISCUSSION:

As a member of the General Court, you are a state employee; and MHFA, MHPFB and EOCD are state agencies^{5/} for the purposes of G.L. 268A (conflict of interest law).

A. Section 7

Section 7 prohibits a state employee from having a direct or indirect financial interest in a contract made by a state agency in which the Commonwealth or a state agency is an interested party unless the employee is eligible for and obtains an exemption. In *EC-COI-81-93*, we described the prophylactic rationale for §7:

The purpose of §7's prohibition is to prevent a state employee from influencing the awarding of contracts by any state agency in a way which might be beneficial to the employee. Because it is impossible to distinguish employees who are in a position to influence the awarding of a contract from those who are not in such position, the law treats all state employees as if they have such influence. See W. G. Buss, *The Massachusetts Conflict of Interest Law: An Analysis*, B.U. Law Rev. 299, 368, 374 (1965).

The section seeks to avoid the perception and the actuality of a state employee's enjoying an "inside track" on state contracts or employment.

Each of the Agreements constitutes a contract made by a state agency in which that very state agency is an interested party within the meaning of §7. MHFA is an interested party in both its loan purchase and its servicing Agreements with XYZ; MHPFB is an interested party in its tri-party subsidy Agreements with XYZ and borrowers and in its loss reserve Agreements with XYZ; and EOCD is an interested party in its HOME Agreements with Non-State Entities.

1. Threshold Question

The threshold question here is whether you, as a loan officer of XYZ, would have a direct or indirect financial interest in such contracts.

The State Programs have been established to subsidize or assist low- and moderate-income home buyers in obtaining mortgage loans. Each Program's State Assistance is effected differently. The MHFA Program provides private lenders like XYZ incentives for making such loans because the MHFA agrees to purchase the loan and pay the lender annual loan servicing fees, and, in addition, the lender can, by making such loan, satisfy certain state and federal minimum requirements to lend in disadvantaged areas. The MHPFB and EOCD Programs also provide private lenders incentives for making such loans by affording them additional security, whether by easing the borrowers' financial burdens through subsidies or junior financing, by providing a loan loss reserve to cover certain loan defaults and/or by allowing lenders to structure certain of such loans for sale in the secondary market. As a result of the State Programs, private lenders are willing and able to apply more flexible underwriting standards for making such loans.

XYZ pays you a commission only for an XYZ loan that is made to borrowers whose loans you initiated and that actually close. In other words, your being compensated by XYZ is conditional on the closing of the

relevant loan.

We have never squarely addressed the question presented by this case. The Supreme Judicial Court has observed that the conflict of interest law is “deficient” because it does not contain a definition of “financial interest.” *Graham v. McGrail*, 370 Mass. 133, 138 (1976), citing an earlier opinion. We note that neither does the law contain a definition of the even more difficult concept of “indirect financial interest.” Through our opinions, we have developed those concepts. Our conclusion in this case that you would have an indirect financial interest in state contracts stems from that precedent and from public policy considerations.

In a line of opinions, we have held that a public employee who is also a real estate broker “on the side” would have a prohibited financial interest in a commission resulting from the consummation of a land sale contract in which the employee’s level of government is the seller or the buyer. See *EC-COI-81-63* (n. 2); *81-93*; *85-32* (state employee/real estate broker who, directly or through her business, received a commission in connection with the purchase or sale of state property).^{6/} In those cases, the broker would not have been compensated by commission, whether from the sale proceeds or not, if the land sale transaction had not been consummated. See also *EC-COI-79-128*, involving a state employee who was to be compensated by private insurance companies for contacting other state employees to encourage them to enroll in deferred compensation plans under the direction and oversight of the state, where we concluded that the subject employee would have an indirect financial interest in the state contract between the subscribing employees and the state.

Although, in your situation, you would be one step further removed from the subject state contract, you, like the real estate broker, would not be compensated for an XYZ loan closing involving State Assistance unless the applicable state contract was consummated.

In *EC-COI-93-10*, we held that a state employee seeking to be employed “on the side” as a Zamboni operator by a private vendor at a state-owned ice rink would have a prohibited indirect financial interest in his employer/state agency’s ice rink management contract with that private vendor. In that case, there was no indication that the ice rink employee was to be compensated out of state monies. Our rationale was that the state management contract made it possible for the vendor to operate the ice rink, and “but for” that state contract, the state employee would not have been able to work as a Zamboni driver for compensation at the state ice rink facility. We applied a “but for” test to trace the state employee’s indirect financial interest to the subject state contract.

Similarly, in your situation, “but for” the State Assistance to the borrower, the particular loan on which your commission is based would not be made, and you would not be compensated.

In *EC-COI-87-14*, we advised a state employee who was a developer “on the side” who did not have a direct contract with EOCD that he would have a financial interest in EOCD contracts designed to assist low- and moderate-income families to purchase affordable housing. We wrote that, even though a factual determination revealed that the employee/developer’s financial interest in the EOCD subsidy program was “not substantial, direct, or quantifiable,” we would not “make an exception to application of the literal language of §7.”

Comparing your situation to that case, XYZ would have a direct financial interest in the various Agreements to which it was a party, namely the MHFA and the MHPFB Agreements; and XYZ would have an indirect financial interest in EOCD’s HOME Agreements, which would assist its borrowers in qualifying for the subject loan. Although your financial interest would be one step removed from XYZ’s, you also would have a financial interest in those Agreements. Like the state employee/developer in *EC-COI-87-14*, your financial interest would be indirect and perhaps not substantial as to any specific Agreement, but unlike that person, your interest would be quantifiable.

In certain cases, the Commission has determined that a state employee’s interest in a state contract does not implicate §7. Your situation is distinguishable from those cases.

Your insulation from and lack of contact with the state agencies providing the State Assistance does not nullify §7. In several opinions we have made it clear that the application of §7 does not depend on the state employee’s being involved in the state contract. *EC-COI-83-13* (state employee was prohibited from receiving from a private foundation monies derived from a state agency’s grant regardless of the fact that the grant was

awarded prior to his state employment); *EC-COI-84-133* (under the municipal counterpart to §7, former municipal employee was prohibited from receiving commissions generated from insurance policies covering his municipality during the period when he was a municipal employee regardless of whether or not he wrote policies for the town).

Our articulation of §7's prophylactic purpose in *EC-COI-87-14*, *supra*, is apt here:

The language of §7 is designed to prevent the opportunity to gain financially from contracts made by a state agency as much as it is designed to prevent the reality of financial gain.

One can understand, in light of that purpose, why a member of the General Court or an employee of MHFA, MHPFB or EOCD could be considered to be in a position from which he could influence the awarding of State Assistance in particular instances and why, then, §7 is broadly designed to prevent such a state employee from having the opportunity to benefit or from actually benefiting therefrom. Although we recognize that your financial interest is more remote than XYZ's, §7's prohibition applies to prevent you from having the "opportunity to gain financially from contracts made by" MHFA, MHPFB and EOCD.

For those reasons, we conclude that you would have an indirect financial interest in a state contract if you were to receive a commission from XYZ conditional upon the closing of a loan made to a borrower who receives State Assistance to facilitate such loan closing. In so concluding, we recognize that your actual commission would be paid out of a separate XYZ account, not directly from State Loan Assistance monies. However, XYZ's payment of such commission to you would be triggered by the closing of the entire loan transaction, which would presumably not close as structured "but for" the availability of State Assistance. It is because your receipt of compensation in such cases is dependent or conditional upon the consummation of a state contract, namely, one or more of the Agreements, that you would have an indirect financial interest in such state contract.

We point out that if, rather than compensating you by commission paid only upon the closing of the subject loan, XYZ were to compensate you by salary or at an hourly rate or even by commission for each XYZ loan application that you process (whether the loan closes or not), our analysis would differ. In any of such cases, your receipt of compensation would not be conditional upon or triggered by the consummation of a state contract. *See, e.g., EC-COI-85-40* (a member of the General Court/state employee was prohibited from representing for compensation a private client selling land to a state agency, but his associate could represent such client and, provided the legal fees were based on hourly rate rather than a percentage of the purchase price, the state employee could share in such compensation); *see, also, EC-COI-81-3* (state employee who was also a salaried employee of private firm who did not share in firm's profits and was not paid with state contract monies would not have a financial interest in his firm's state contracts); *81-87* (state college employee who was also employed as president of a bank with which the college deposited funds did not have a financial interest in the contracts between the college and the bank because his bank compensation was by salary that was not conditioned upon the level of college deposits in the bank).

In other words, if XYZ were to pay you **regardless** of whether its loans to borrowers, including those receiving State Assistance, closed, your receipt of the XYZ commission would not implicate §7. *See EC-COI-83-28* (state employee selling land to his town would have a prohibited financial interest in a state grant to town if the town were to vote to purchase the property **on the condition** that the town received state grant money, but he would not have such financial interest if the town were to vote to purchase the property **regardless** of whether it would subsequently receive state grant money reimbursing it for the purchase).

2. Exemption

The next question is whether any exemption is available to you that would permit you to work for XYZ on loans that may be subsidized or assisted through a State Program. The only pertinent exemption is contained in §7(c), which is specifically applicable to members of the General Court and provides that a member of the General Court will be exempt from §7's prohibitions if the subject state contract is not made by either branch of the General Court and "if his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten percent of the total proprietary interests therein, and the **contract is made through competitive bidding**⁷ and he files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate

family.” We are assuming for the purposes of this analysis that you would qualify for this exemption under the percentage interest test because you have no proprietary interest in either XYZ or in any Non-State Entities who may be parties to the Agreements for State Program Assistance.

Nevertheless, the §7(c) exemption does not apply to your situation because none of the state agencies providing State Assistance can be said to engage in any competitive bidding process, as defined in §1(b), before entering into Agreements with private lenders such as XYZ or the Non-State Entities.

Were you a state employee, other than a member of the General Court, it appears that you would be eligible for the §7(b) exemption, which is less restrictive. Among its other requirements, §7(b) provides that the subject state contract must be made after **either** “public notice or where applicable, through competitive bidding.” The more easily satisfied “public notice” language was added to the §7(b) exemption during the 1982 legislative session, when the General Court considered and enacted various changes designed to reduce the scope of §7’s prohibitions. *See* St. 1982, c. 612, §§5-7. Section 7(c) has not been similarly amended.

In sum, you may not receive a commission from XYZ in connection with the closing of a mortgage loan to borrowers subsidized or assisted with State Assistance so long as your receipt of the commission is conditional upon the consummation of the subject loan transaction.

B. Applicability of Other Sections

1. Section 4

Section 4 regulates what a state employee may “do on the side.” It generally prohibits state employees from receiving compensation from or acting as agent for anyone other than the state or a state agency in connection with a particular matter in which the state or a state agency is a party or has a direct and substantial interest.

However, in most instances, those substantive restrictions do not apply to members of the General Court, who are only prohibited by §4 from personally appearing for compensation^{8/} (other than their legislative salaries) before state agencies for compensation, **unless**:

- (1) the particular matter before the state agency is ministerial in nature;^{9/} or
- (2) the appearance is before a court of the commonwealth; or
- (3) the appearance is in a quasi-judicial proceeding.^{10/}

See EC-COI-89-31 (applying §4 to a member of the General Court having a private law practice). We have construed the “personal appearance” prohibition as including all contacts and communications (whether in person, by telephone or in writing) with a state agency or state agency personnel with intent to influence. *Id.*; *EC-COI-87-27*.

Your current activities as an XYZ loan officer do not appear to implicate §4 because you do not contact, communicate with or otherwise deal with state agencies. Were your responsibilities for XYZ to change, so as to require you to engage in contacts or communications with or to any state agency or its personnel, this would raise concerns under §4, and you should seek further advice from us.

2. Section 6

Section 6, in relevant part, prohibits a state employee from participating in any particular matter^{11/} in which to his knowledge he or a business organization in which he serves as an employee has a financial interest. “Participation”^{12/} includes both formal and informal lobbying of colleagues, giving advice and making recommendations, not just deciding or voting on particular matters. The financial interest may be of any size and may be either positive or negative. It must, however, be direct and immediate or reasonably foreseeable in order to implicate §6.

This section will not prohibit you from participating in connection with general legislation even if it would foreseeably affect your own or XYZ's financial interests^{13/} because "general legislation" is specifically excluded from the conflict law's definition of "particular matter." *See EC-COI-87-11.*

However, special legislation is not so excluded. In *EC-COI-90-17*, describing the attributes of special, as compared to general, legislation, we wrote that "legislation which is temporary, which does not amend the General Laws, and which creates an exception or special rule which does not apply to other similarly situated individuals or organizations will be regarded as special legislation." Thus, for example you might be required to abstain if there were proposed special legislation to increase MHFA's bonding authority that would have a reasonably foreseeable affect on XYZ's financial interest. *See, e.g., EC-COI-85-69.* In addition, concerns may arise under this section if you were asked to consider such matters as individual agency appropriations or individual budget line items (apart from the entire budget) that would have a reasonably foreseeable financial affect on XYZ's financial interests.

As you do not serve on the legislature's Banking or Housing Committees, it appears that §6 will impose relatively insignificant restrictions on your activities as a member of the General Court.

3. Section 23

Section 23 imposes standards of conduct that are applicable to all public employees.

First, §23(b)(2) prohibits a public employee from using his official position to obtain unwarranted privileges or exemptions of substantial value^{14/} for himself or others that are not available to similarly situated individuals. Under §23(b)(2), we have consistently prohibited public employees from using their titles, state time and public resources, including secretarial services and copying facilities, to promote private interests. *See, e.g., EC-COI-92-28; 92-12; 92-5* (legislator may not use state seal on correspondence to promote political campaign); *89-31* (legislator may not use government resources or letterhead to promote or announce private law practice); *P.E.L. 89-4* (state employee may not use state letterhead, state time, state secretarial resources to promote private trip).

Second, we have generally held that, unless authorized by statute or regulation, a public employee is prohibited by §23(b)(2) from soliciting anything of substantial value from subordinate employees, vendors with whom he has official dealings or persons with a specific interest in a piece of legislation.^{15/} That is because of the inherently exploitable nature of such situations. *See EC-COI-84-61* (addressing legislator's marketing of tax shelters); *84-124; 82-64.*

Third, §23(b)(3), the so-called "appearances" section, prohibits a public employee from acting in a manner that would cause a reasonable person to conclude that anyone can improperly influence him or unduly enjoy his favor in the performance of official duties. The section requires the employee to dispel any such "appearance" by making a written disclosure of the relevant facts in a manner that is public in nature. A member of the General Court may make such disclosure by filing it with the clerk of his or her legislative branch and, if applicable, by having it recorded with the minutes of the meeting or hearing at which the "appearance" may arise.

As applied to your situation, (i) you may not use state resources or facilities to promote XYZ's or your own private business interests and (ii) you may not intervene on behalf of XYZ, potential borrowers or any Non-State Entities to promote any of their interests with or to any of the State Program agencies.

Furthermore, you may not solicit loan business for XYZ from subordinate employees or vendors with whom you have official dealings as a member of the General Court or from "persons at a time when they have a specific interest in a piece of legislation before you." *See EC-COI-84-61.* That is, you may not "target" for such solicitation anyone with such an interest in legislative business. If, to your knowledge, any such employee, vendor or person with such an interest in legislative business seeks a loan through you from XYZ, (i) that person's decision to apply for such loan must be entirely voluntary, (ii) that person (not you) must have initiated the proposed business relationship and (iii) you must publicly disclose in writing the facts clearly showing that the conditions described in clauses (i) and (ii) have been satisfied. This requirement is derived from §23(b)(2) and

§23(b)(3) to overcome the inherently exploitable nature of certain relationships.

DATE AUTHORIZED: September 13, 1995

^{1/}There are also approximately 30 additional lenders that once participated in the MHFA Program and are still servicing the remaining outstanding loans.

^{2/}MHPFB was created by and funded through Chapter 405, §35 of the Acts of 1985, which was amended by Chapter 102, §§34-37 of the Acts of 1990, which characterizes MHPFB as “a body politic and corporate” and constituted as “a public instrumentality” “placed in” the Massachusetts Executive Office of Communities and Development.

^{3/}This Program was originally funded with an appropriation from the General Court. Its recent funding has come through EOCD and, through the FY 1995 budget process, its current funding is derived from \$1,000,000 of MHFA monies.

^{4/}The MHPFB Program has one additional requirement, namely, that a request for reservation of funding be sent directly to MHPFB by XYZ’s loan officer; however, while the lender’s and the loan officer’s names must be inserted in blanks on the reservation request form, only the applicant-borrower(s) sign the form.

^{5/}“State agency,” any department of a state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department and any independent state authority, district, commission, instrumentality or agency, but not an agency of a county, city or town. G.L. c. 268A, §1(p).

^{6/}In *EC-COI-90-2* and *92-40*, decided under §20, the municipal counterpart to §7, we presented hypothetical cases in which municipal employee/real estate brokers would have prohibited financial interests in commissions “based on the sale price” of the subject real estate. We intended thereby to confirm, not to narrow, our prior holdings.

^{7/}“Competitive bidding,” all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder. G.L. c. 268A, §1(b).

^{8/}“Compensation,” any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another. G.L. c. 268A, §1(a).

^{9/}“[M]inisterial functions include, but are not limited to, the filing or amendment of: tax returns, applications for permits or licenses, incorporation papers, or other documents.” G.L. c. 268A, §4.

^{10/}“[A] proceeding shall be considered quasi-judicial if:

- (1) the action of the state agency is adjudicatory in nature; and
- (2) the action of the state agency is appealable to the courts; and
- (3) both sides are entitled to representation by counsel and such counsel is neither the attorney general nor the counsel for the state agency conducting the proceeding.” G.L. 268A, §4.

^{11/}“Particular matter,” any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{12/}“Participate,” participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{13/}For example, general legislation expanding the scope of one or more of the State Programs might foreseeably affect XYZ’s, potentials borrowers’ and/or your financial interests.

^{14/}Anything having a value of \$50 or more is “of substantial value.” *EC-COI-93-14*; *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *Commission Advisory No. 8 (Free Passes)*.

^{15/}Section 3(b) also prohibits a public employee from soliciting or receiving “anything of substantial value for himself for or because of” his official acts.